

EIC 2800 SEARCH REPORT



STIC Database Tracking Number: 359337

To: SEUNGSOOK HAM
Location: JEF-8D65
Art Unit: 2817
Tuesday, March 22, 2011

Case Serial Number: ~~09/987978~~ +
09/989,242

From: DIANE JACKSON
Location: EIC2800
JEF-4B68
Phone: (571)272-3260

diane.jackson@uspto.gov

Search Notes

Hi,

Attached are litigation search results in Lexis Nexis, and CourtLink and Q-Pat/Orbit.

No Litigation was found for Serial Number 09/987978 and Patents 5637913 and 5378656.

If you have any questions, please feel free to contact me.

Thanks,

Diane

MAR 22 2011

3 59 337

Jackson, Diane

From: Ham, Seungsook
Sent: Monday, March 21, 2011 4:11 PM
To: STIC-EIC2800
Subject: litigation search for reissue application: 09/987978 (USP 5637913)

Could you do a litigation search for above reissue application and send me a copy?

Thanks,
Seungsook(Robyn) Ham
U.S. Patent & Trademark Office
TC 2800 TQAS (detailee)
Jeff. bldg. 8D65
571-272-2405

5,637,913

5,378,656

Application Number Information

Application Number Information

Application Number: 09/987978 [Assignments](#)Filing or 371(c) Date: 11/16/2001 [eDan](#)

Effective Date: 11/16/2001

Application Received: 11/16/2001

Patent Number:

Issue Date: 00/00/0000

Date of Abandonment: 00/00/0000

Attorney Docket Number: 1374.32049RV1

Status: 71 /RESPONSE TO NON-FINAL OFFICE ACTION ENTERED AND FORWARDED TO EXAMINER

Confirmation Number: 7905

Title of Invention: LEADFRAME SEMICONDUCTOR INTEGRATED CIRCUIT DEVICE USING THE SAME, AND METHOD OF AND PROCESS FOR FABRICATING THE TWO

Examiner Number: 72333 / [CLARK, JASMINE](#)

Group Art Unit: 2815

Class/Subclass: 257/666.000

Lost Case: NO

Interference Number:

Unmatched Petition: NO

[L&R Code](#): Secrecy Code:1

Third Level Review: NO

Oral Hearing: NO

[IFW Madras](#)

Secrecy Order: NO

Status Date: 02/01/2011

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Appln Info	Contents	Petition Info	Atty/Agent Info	Continuity/Reexam	Foreign Data	Inventors	Address	Fees	Post Info	Pre Gre
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Continuity/Reexam Information for 09/987978

Parent Data

09987978, filed 11/16/2001 is a reissue of 08311021, filed 09/22/1994, now U.S. Patent #5637913 and having 1 RCE-type filing therein
08311021 is a division of 08038684, filed 03/29/1993, now U.S. Patent #5378656
claims foreign priority to 4-320098, filed 11/30/1992
claims foreign priority to 4-071116, filed 03/27/1992

Child Data

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Application Number Information

Application Number Information

Application Number: 08/311021 [Assignments](#)Filing or 371(c) Date: 09/22/1994 [gDan](#)

Effective Date: 09/22/1994

Application Received: 09/22/1994

Patent Number: 5637913

Issue Date: 06/10/1997

Date of Abandonment: 00/00/0000

Attorney Docket Number: 501.32049VX

Status: 150 /PATENTED CASE

Confirmation Number: 8059

Title of Invention: LEADFRAME SEMICONDUCTOR INTEGRATED CIRCUIT DEVICE USING THE SAME AND METHOD OF AND PROCESS FOR FABRICATING THE TWO

Examiner Number: 72333 / [CLARK, JASMINE](#)

Group Art Unit: 2503

Class/Subclass: 257/666.000

Lost Case: NO

Interference Number:

Unmatched Petition: NO

[L&R Code](#): Secrecy Code:1

Third Level Review: NO

Secrecy Order: NO

Status Date: 05/30/1997

Oral Hearing: NO

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08311021	28U3	10/16/2009	No Charge to Location	No Charge to Name	DEES,JOSE	JEF/08/D 59

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Application Number Information

Application Number: 08/038684 [Assignments](#)Filing or 371(c) Date: 03/29/1993 [eDan](#)

Effective Date: 03/29/1993

Application Received: 03/29/1993

Patent Number: 5378656

Issue Date: 01/03/1995

Date of Abandonment: 00/00/0000

Attorney Docket Number: 501-32049X00

Status: 150 /PATENTED CASE

Confirmation Number: 9581

Title of Invention: LEADFRAME, SEMICONDUCTOR INTEGRATED CIRCUIT DEVICE USING THE SAME, AND METHOD OF AND PROCESS FOR FABRICATING THE SAME

Examiner Number: 69603 / [PICARDAT, KEVIN](#)

Group Art Unit: 1104

Class/Subclass: 999/217.000

Lost Case: NO

Interference Number:

Unmatched Petition: NO

[L&R Code](#): Secrecy Code:1

Third Level Review: NO

Secrecy Order: NO

Status Date: 06/16/1995

Oral Hearing: NO

Bar Code	PALM Location	Location Date	Charge to Loc	Charge to Name	Employee Name	Location
08038684	28U3	05/01/2004	No Charge to Location	DEES, JOSE	INVENTORY,THIRTY6	JEF/08/D 59

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New

Leadframe semiconductor integrated circuit device using the same and method of and process for fabricating the two

AB

(US5637913)

In order to improve the package body cracking resistance of an LSI package at the reflow soldering and to provide both a leadframe suitable for fabricating the LSI package according to the flexible manufacturing system and an LSI using the leadframe, the adhered area between a semiconductor chip 2 and a resin is enlarged by making the external size of a die pad 3 smaller than that of the semiconductor chip to be mounted thereon. Moreover, a variety of semiconductor chips 2 having different external sizes can be mounted on the die pad 3 by cutting the leading ends of leads 5 to a suitable length in accordance with the external sizes of the semiconductor chips 2.

IN

KAJIHARA YUJIRO SUZUKI
KAZUNARI TSUBOSAKI KUNIHIRO
SUZUKI HIROMICHI MIYAKI
YOSHINORI NAITO TAKAHIRO
KAWAI SUEO

PA

HITACHI ULSI SYSTEMS
RENESAS ELECTRONICS

PA0

Hitachi, Ltd., Tokyo [JP]
Hitachi Microcomputer System, Ltd.,
Tokyo [JP]

Published As

	Publ. number	Pub. date	Appl. number	Appl. date	Pr
	US5637913	19970610	1994US-0311021	19940922	/

PR

1992JP-0071116 19920327
1992JP-0320098 19921130
1993US-0038684 19930329
1994US-0311021 19940922

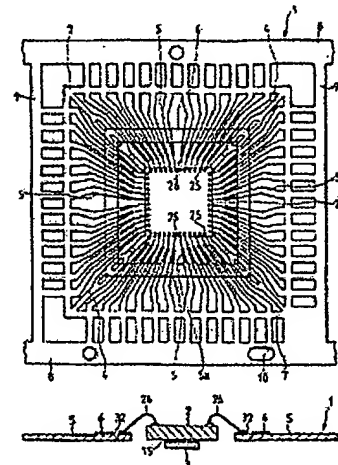
PCL

257666000 257672000 257674000 257676000 257783000 257E23037

053702940 053702940

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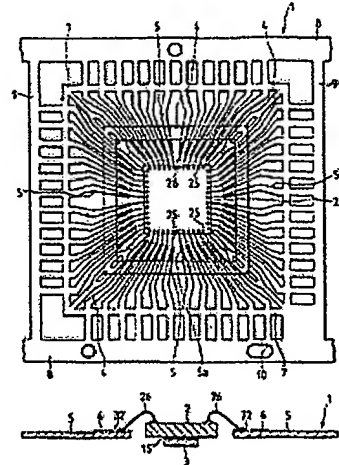
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New

Date	Code	Action
Alive: US5637913 A		
19940922	US/API [EXM;POS]	FILING DETAILS US31102194 19940922 [1994US-0311021]
19970610	US/A [EXM;POS]	Patent US5637913 A 19970610 [US5637913]
19990803	US/RF-A [OPP]	REISSUE APPLICATION FILED EFFECTIVE DATE: 19990609
20000518	US/AS-A [NMC]	ASSIGNMENT OWNER: HITACHI ULSI SYSTEMS CO., LTD. 22-1, JOSUIHONCHO,; EFFECTIVE DATE: 19980401 CHANGE OF NAME;ASSIGNOR:HITACHI MICROCOMPUTER SYSTEM, LTD.;REEL/FRAME:010828/0905
20000518	US/AS-A [NMC]	ASSIGNMENT OWNER: HITACHI ULSI SYSTEMS CO., LTD., JAPAN; EFFECTIVE DATE: 19980401 CHANGE OF NAME;ASSIGNOR:HITACHI MICROCOMPUTER SYSTEM, LTD.;REEL/FRAME:010828/0905
20020115	US/RF-A [OPP]	REISSUE APPLICATION FILED EFFECTIVE DATE: 20011116
20020430	US/RF-A [OPP]	REISSUE APPLICATION FILEDEFFECTIVE DATE: 20011121




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or or w/seg in same segment

w/N within N words w/s in same sentence

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or	or	w/seg	in same segment
w/N	within N words	w/s	in same sentence
pre/N	precedes by N words	and not	and not

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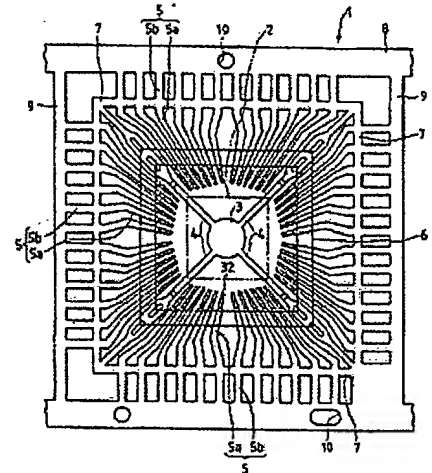
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HITACHI ULSI SYSTEMS
RENESAS ELECTRONICS
RENESAS TECHNOLOGY

Published As

Publ. number	Publ. date	Appl. number	Appl. date	Pl
JP6216303	19940805	1993JP-0065784	19930325	/
US5378656	19950103	1993US-0038684	19930329	/
JP10326859	19981208	1998JP-0185261	19980630	/
JP2891607	19990517			E
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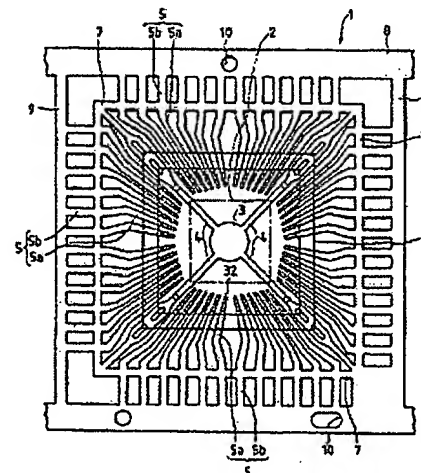
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5378656

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January 3, 1995

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INVENTOR: Kajihara, Yujiro - Tachikawa, Japan (JP) ; Suzuki, Kazunari - Tokyo, Japan (JP) ; Tsubosaki, Kunihiro - Hino, Japan (JP) ; Suzuki, Hiromichi - Machida, Japan (JP) ; Miyaki, Yoshinori - Kokubunji, Japan (JP) ; Naito, Takahiro - Koganei, Japan (JP) ; Kawai, Suelo - Iwama, Japan (JP)

APPL-NO: 038684 (08)

FILED-DATE: March 29, 1993

GRANTED-DATE: January 3, 1995

PRIORITY: March 27, 1992 - 04071116, Japan (JP) ; November 30, 1992 - 04320098, Japan (JP)

ASSIGNEE-PRE-ISSUE:

July 21, 1994 - ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS)., HITACHI, LTD. CHIYODA-KU, TOKYO, JAPAN, HITACHI MICROCOMPUTER SYSTEM LTD. KODAIRA-SHI, TOKYO, JAPAN, CHIYODA-KU, TOKYO, JAPAN (), Reel and Frame Number: 007070/0577

ASSIGNEE-AT-ISSUE:

Hitachi, Ltd., Tokyo, Japan (JP)
Hitachi Microcomputer System Ltd., Ibaraki, Japan (JP)

ASSIGNEE-AFTER-ISSUE:

May 26, 2000 - CHANGE OF NAME (SEE DOCUMENT FOR DETAILS)., HITACHI ULSI SYSTEMS CO., LTD. 22-1, JOSUIHONCHO, 5-CHOME, KODAIRA-SHI, TOKYO, (1), Reel and Frame Number: 010804/0789

March 30, 2010 - ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS)., RENESAS TECHNOLOGY CORP., 6-2, OTEMACHI 2-CHOME, CHIYODA-KU, TOKYO, JAPAN (), Reel and Frame Number: 024160/0452

July 30, 2010 - MERGER (SEE DOCUMENT FOR DETAILS)., RENESAS ELECTRONICS CORPORATION, KAWASAKI, 1753 SHIMONUMABE, NAKAHARA-KU, KANAGAWA, JAPAN (), Reel and Frame Number: 025204/0512

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*19 Cl. Ct. 561, *; 1990 U.S. Cl. Ct. LEXIS 41, **;
36 Cont. Cas. Fed. (CCH) P75,811*

BEAN DREDGING CORPORATION and Weeks Marine, Inc., Plaintiffs v. The UNITED STATES, Defendant

No. 604-89C

UNITED STATES CLAIMS COURT

19 Cl. Ct. 561; 1990 U.S. Cl. Ct. LEXIS 41; 36 Cont. Cas. Fed. (CCH) P75,811

February 14, 1990

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff joint venturers sought to enjoin defendant, the United States Army Corps of Engineers, from cancelling a bid invitation for river and harbor improvement contracts, which the corps planned to do pursuant to 33 U.S.C.S. § 624 due to the fact that all the bids received were 25 percent higher than the corps estimates of the dredging project.


OVERVIEW: The joint venturers claimed that the corps violated the Fed. Acquisition Reg. § 14.404-1, specifically codified at 48 C.F.R. § 14.404-1, by not awarding a contract to the lowest responsible bidder without a compelling reason to do so and the evidence showed that the corps estimate was unreasonably low due to calculation errors that violated of 48 C.F.R. § 14.404-1(c)(6); and the corps breached the implied-in-fact contract provision contained in all government solicitations to consider bids in a fair and reasonable manner. The court granted the joint venturers their requested injunctive relief and held that based on the evidence presented and the calculations provided by the corps that the corps had miscalculated the costs involved in the dredging project and once the calculations were corrected that the bid made by the joint venturers was within 25 percent of the corrected cost estimate and in compliance with 33 U.S.C.S. § 624, 48 C.F.R. § 14.404-1. The court further held that the corps had failed to prepare a fair and reasonable cost estimate for the project; violated its implied-in-fact obligation to treat all fully, fairly, and honestly; and therefore could not cancel the bid.


OUTCOME: The court granted the injunctive relief requested by the joint venturers and enjoined the corps and all persons acting in concert with the corps from awarding a contract or disbursing funds to anyone other than the joint venturers for the dredging project.

CORE TERMS: monthly, dredging, estimate, bid, dredge, plant, estimated, mud, pipeline, corrected, mobilization, mandatory, calculation, demobilization, overhead, booster, awardable, ownership, proven, depreciation, reasonable estimate, adjusted, revised, river, channel, fuel, formula, submerged, mathematical errors, engineer


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Administrative Law > Sovereign Immunity 


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HN1  28 U.S.C.S. § 1491(a)(3) provides that to afford complete relief on any contract claim brought before the contract is awarded, the claims court shall have exclusive jurisdiction to grant declaratory judgments and such equitable and extraordinary relief as it deems proper, including but not limited to injunctive relief. More Like This Headnote


Public Contracts Law > Costs & Prices > Price Analysis 


Public Contracts Law > Terminations > Enforcement of Promises 

HN2  33 U.S.C.S. § 624 prohibits the award of river and harbor improvement contracts when all bids exceed the estimate of the United States by more than 25 percent. More Like This Headnote | *Shepardize: Restrict By Headnote*


Public Contracts Law > Bids & Formation > Offer & Acceptance > General Overview 


Public Contracts Law > Dispute Resolution > Bid Protests 

Public Contracts Law > Governmental Immunities > Statutory Restrictions 

HN3  Fed. Acquisition Reg. § 14.404-1(a)(1), specifically codified at 48 C.F.R. § 14.404-1, states in part that preservation of the integrity of the competitive bid system dictates that, after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation. More Like This Headnote | *Shepardize: Restrict By Headnote*

Public Contracts Law > Types of Contracts > Construction Contracts 


Transportation Law > Water Transportation > Waterways 

HN4  USACE Eng'g Reg. No. ER 1110-2-1300 provides the estimator with general data, procedures, average values, and a format for guidance in preparing government estimates for dredging. More Like This Headnote

Public Contracts Law > Costs & Prices > Cost Principles 

Public Contracts Law > Types of Contracts > Construction Contracts 


Transportation Law > Water Transportation > Waterways 

HN5  USACE Eng'g Pamp. No. EP 1110-1-8 establishes predetermined equipment ownership and operating expense rates for use in preparation of estimates for bidding. More Like This Headnote


Public Contracts Law > Costs & Prices > Cost Principles 

Public Contracts Law > Types of Contracts > Construction Contracts 


Transportation Law > Water Transportation > Waterways 


HN6  33 U.S.C.S. § 624 sets limits on improvement work by private contract and states in part that (a) determinations respecting comparison of private contract price with estimation of cost of performance of work by a United States plant or by well-equipped contractor, no works of river and harbor improvement shall be done by private contract (2) in any other circumstance where the United States Secretary of the Army, acting through the United States Chief of Engineers,


determines that the contract price is more than 25 per centum in excess of what the secretary determines to be a fair and reasonable estimated cost of a well-equipped contractor doing the work and limits (c) considerations involved in determinations of estimation of cost of performance of work by well-equipped contractor. More Like This Headnote | *Shepardize: Restrict By Headnote*


Public Contracts Law > Costs & Prices > Cost Principles 


Public Contracts Law > Types of Contracts > Construction Contracts 


Transportation Law > Water Transportation > Waterways 


HN7  In determining a fair and reasonable estimated cost of doing work by private contract under 33 U.S.C.S. § 624(a)(2), the United States Secretary of the Army, acting through the United States Chief of Engineers, shall, in addition to the cost of labor and materials, take into account proper charges for depreciation of plant, all expenses for supervision, overhead, workmen's compensation, general liability insurance, all taxes, interest on capital invested in plant, and such other expenses and charges the secretary, acting through the chief of engineers, determines to be appropriate. More Like This Headnote


Administrative Law > Sovereign Immunity 

Governments > Courts > Courts of Claims 


Public Contracts Law > Dispute Resolution > Jurisdiction 

HNS  The equitable jurisdiction of the claims court under 28 U.S.C.S. § 1491(a)(3) is subject to substantial limitations and the claims court must exercise great caution and should not substitute its judgment for that of an agency. Judicial intrusion into the procurement pre-award agency decision is generally limited in scope, circumspect, and infrequent. The claims court should intervene only when it is clearly determined and proven that the agency's determination is irrational or unreasonable or where the decision was made in clear and prejudicial violation of applicable statutes or regulations. More Like This Headnote

Business & Corporate Law > Agency Relationships > Causes of Action & Remedies > Breach of Contract 

Contracts Law > Contract Interpretation > Good Faith & Fair Dealing 


Contracts Law > Remedies > Equitable Relief > Injunctive Relief 

HN9  A disappointed bidder may obtain injunctive relief for an alleged agency breach of the implied-in-fact contract obligation to treat each and every bid in a full, fair, and honest manner in one of two ways. The bidder must show either (1) that the agency's decisionmaking process lacked a rational or reasonable basis, or (2) that the procurement procedure involved a clear and prejudicial violation of applicable statutes or regulations. Proof in either of these two circumstances must be established by clear and convincing evidence, which must overcome the strong presumption that government officials will perform their official duties properly and in good faith. The level of proof required to overcome this presumption is "well-nigh irrefragable," a burden which is not sustained by speculation. More Like This Headnote | *Shepardize: Restrict By Headnote*

Administrative Law > Judicial Review > Standards of Review > Arbitrary & Capricious Review 

Evidence > Inferences & Presumptions > General Overview 

Public Contracts Law > Dispute Resolution > Jurisdiction 

HN10  Allegations of irrational or unreasonable decisionmaking by the agency are judged against what amounts to arbitrary and capricious conduct. More Like This Headnote

Administrative Law > Judicial Review > Standards of Review > Clearly Erroneous Review 

3/22/2011

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Plaintiffs' motion for a temporary restraining order was denied as moot. Their motions for preliminary and permanent injunctive relief were thereafter consolidated, and a hearing was held on the **[**3]** merits for a permanent injunction from November 29, 1989 to December 5, 1989. For the reasons stated hereinafter, we grant plaintiffs' consolidated motion for injunctive relief.

Facts

The Corps' Mobile District Office issued Invitation for Bids (IFB) No. DACW01-89-B-0076 on July 27, 1989. The IFB solicited bids for maintenance dredging on the Mobile River ship channel in Mobile, Alabama. The work was to be performed on that portion of the river between Station 0 + 00 - tangent 1 and Station 31 + 60 - tangent 5; a dredging channel of approximately 24,000 to 25,000 feet in length and 500 to 1,000 feet in width. The IFB required "the removal . . . of the material lying above the channel bottom elevations (below mean low water) and over the channel bottom widths and lengths as specified on the contract drawings," PX 3, p. 2A-1. This requirement contemplated the removal of all shoal³ material within a box-cut prism. Thus, offerors were required to bid the project according to the materials within the prism, described as a depth of - 42.0 feet below mean low water and the channel width prescribed by contract drawings referenced in the IFB. The quantity of materials to be removed **[**4]** was not advertised by the Corps. Bidders were, therefore, required to make this determination for themselves on the basis of IFB drawings coupled with three channel surveys included with the IFB. These three surveys, taken in November 1988, May 1989, and August 1989, provided all bidders with various channel cross-sections which indicated the distribution of the shoal material to be removed from the box-cut template.

FOOTNOTES

³ The shoal is that material deposited in the channel over time. In this case, it is comprised primarily of mud and silt traveling down the Mobile River, and deposited in Mobile Bay. It also includes any material deposited in the channel as a result of tidewater effects.

The materials dredged were to be deposited in two disposal areas. The quantity of the materials to be placed in the first disposal area, known as Mud Lakes 6/7, was restricted to 1,000,000 gross cubic yards. The remainder of the dredged materials was to be deposited in the second disposal area, known as Gaillard Island, which was approximately 14 miles beyond the mid-point of the Mobile River work site. The fact of the foregoing distance to Gaillard Island as a disposal site necessarily **[**5]** contemplated the use of dredging pipeline with an average length of 72,000 feet. This requirement unquestionably made the project unconventional in that it required substantial amounts of submersible pipeline. This is so for the additional fact that the pipeline length was more than the Corps had used on any of five previous contracts in the Mobile River, PX 8.

Under the terms of the IFB, bidders were required to submit fixed, lump-sum prices for four line bid items. The four required components of each bid included:

[*563] Bid Item

- # 1 -- Mobilization and Demobilization;
- # 2 -- Mobile River Dredging;
- # 3 -- Dike Construction and General Rehabilitation for both the Mud Lakes 6/7 and Gaillard Island Disposal Areas; and
- # 4 -- Operation and Maintenance Costs Associated with the Mud Lakes 6/7 and Gaillard Island Disposal Areas.

The Corps, as required, prepared a project contract estimate by which it sought to judge all bids received pursuant to the solicitation. That estimate was prepared by Mr. Paul Warren, Area Engineer for the Mobile

District. As Area Engineer, Mr. Warren is responsible for monitoring the condition of federal navigational channels in the Mobile **[**6]** District, drafting contract specifications for dredging projects, estimating the cost of dredging projects in the District, and execution of those projects. Mr. Warren, a civil engineer registered in the State of Alabama and employed with the Corps since 1974, estimated the cost of the project in issue on four separate occasions. See Appendix E. Each such estimate was prepared on a cost basis, without reference to profit. Additionally, the first two estimates, prepared prior to this litigation, were noted approved by Mr. James R. Couey, Engineering Division Chief. Said estimates were as follows: ⁴

[7]**

Item	The Corps' Estimates			
	Original Estimate	Revised Before Trial	Revised at Trial	Best & Final
1 Mob & Demob	\$ 437,698	\$ 3,222,625	\$ 3,426,031	\$ 3,424,945
2 Dredging Mobile River	5,392,002	4,256,841	4,256,841	4,267,006
3 D/A Activities Dike	84,036	84,036	84,036	84,036
4 D/A Activities Operations	146,760	146,760	146,760	146,760
	\$ 6,060,496	\$ 7,710,262	\$ 7,913,668	\$ 7,922,747.

The Best and Final Estimate (B&FE), DX 7, was increased by the Corps over the Original Estimate by the amount of \$ 1,862,252 (\$ 7,922,747 - \$ 6,060,495) or by 30.72%. The circumstances regarding the preparation of each are discussed seriatim, along with its impact on the award process.

FOOTNOTES

⁴ The "Original Estimate" was for \$ 6,060,496.01 and is contained in PX 7, p. 1. It was later superseded by a "Revised Estimate," PX 7, p. 21, in the amount of \$ 7,710,262.06. The "Revised Estimate," by correcting an error in addition for mobilization and demobilization, was modified at trial to \$ 7,913,668. Tr. 480-481. Finally, Mr. Warren prepared a "Best and Final" Estimate in the amount of \$ 7,922,747.17, DX 7, which was not introduced until the third day of trial. Through all of these revisions, only bid items # 1 and # 2 were modified. Each of the four government estimates are set forth *in detail*, on Appendix E.

Plaintiffs, a joint venture in which Weeks was to provide the financial assistance and Bean was to furnish the labor and equipment, submitted an \$ 11,246,000 fixed lump-sum bid on the Mobile River dredging project. It estimated that the following costs would be incurred for each of the four bid items:

Item	Amount
(1) Mobilization/Demobilization	\$ 3,700,000
(2) Dredging Mobile River	7,416,000
(3) D/A Dike Construction	100,000
(4) D/A Operation and Maintenance	30,000
Total Bid	\$ 11,246,000.

[8]** Their bid was prepared by Mr. Ancil Taylor, the holder of a bachelor of science degree in construction engineering and plaintiff Bean's Manager of Engineering and Estimating. Mr. Taylor has been employed in this capacity for 10 years and is responsible for bidding, analyzing equipment production capabilities, and implementing any dredging methods that would enhance productivity. Mr. Taylor is not, however, a licensed engineer, nor is there evidence of any graduate degrees or study in the engineering field.

[*564] The Corps opened bids on September 28, 1989, and received four responsive offers. All were judged and compared with the \$ 6,060,496.01 Original Estimate, the only Corps' estimate in existence at that time. It was concluded by the Corps that the lowest bid had been submitted by plaintiffs. ⁵ However, citing *HN2-33* U.S.C. § 624, see note 14, *infra*, which prohibits the award of river and harbor improvement contracts when

all bids exceed the government's estimate by *more than 25%*, the Corps refused to award the contract. More specifically, plaintiffs' \$ 11,246,00 bid was far more than 25% greater than the \$ 6,060,496.01 the Corps estimated would be required to accomplish **[**9]** the work. Under its \$ 6,060,496.01 Original Estimate, assuming, of course, it complied with 33 U.S.C. § 624, the Corps could not have made an award on any bid higher than \$ 7,575,620. ⁶

FOOTNOTES

⁵ The other bids were as follows: \$ 11,365,000 by T. L. James and Co.; \$ 12,000,000 by Great Lakes, Inc.; and \$ 18,000,000 by Mike Hooks, PX 4.

⁶ An awardable bid equals no more than the government's fair and reasonable estimate multiplied by 1.25 (awardable bid = government estimate x 1.25). Thus, \$ 7,575,620 = \$ 6,060,496 x 1.25, see 33 U.S.C. § 624.

Bean, on behalf of the joint venture, protested the reasonableness of the government's estimate by a fax transmittal to the Corps on September 29, 1989, PX 5. Said protest requested a review of the Corps' Original Estimate prior to any further action by the Corps, which was done. As a consequence, the Corps made a reconsideration of its estimate, by making some minor changes which did not significantly alter the estimate sufficiently to create an awardable bid, PX 7, p. 40. Subsequently, the Corps informed plaintiffs by telephone that it intended to deny the protest, but offered to further consider any submissions that might influence **[**10]** the contracting officer's decision. In response, plaintiffs submitted an extensive written analysis of the project costs which they deemed to be fair and reasonable, dated October 10, 1989. They attempted to substantiate the alleged reasonableness of their \$ 11,246,000 bid and also sought to demonstrate deficiencies in the government estimate, PX 6. This submission led to a meeting on October 11, 1989, in which Bean, again on behalf of the joint venture, was allowed to make a verbal presentation of plaintiffs' case, PX 6. The Corps analyzed plaintiffs' submission as supplemented and determined that some changes were appropriate. It (the Corps) thereafter prepared a Revised Estimate of \$ 7,710,262, PX 7, p. 21.

The Revised Estimate, while not creating an awardable contract, ⁷ led the Corps to conclude that a negotiated procurement was possible. Consequently, the Corps decided to convert the IFB to a request for proposals (RFP) to enable the Corps to negotiate with any and all of the original four bidders to produce an awardable contract. When informed of this decision, plaintiffs requested another audience with the Corps. Two meetings were held on October 20, 1989, in which **[**11]** plaintiffs' vigorously contested the Corps' plan to cancel the IFB, PX 7, p. 41. Plaintiffs and the Corps were unable to reach an agreement, whereupon plaintiffs filed suit in this court to enjoin cancellation of the IFB on November 7, 1989. Said suit contends that plaintiffs' bid was not treated fairly, as required, in that the Corps' estimate was determined in violation of 33 U.S.C. § 624.

FOOTNOTES

⁷ Notwithstanding the revised estimate, the Corps could not have made an award on any bid higher than \$ 9,637,828 (\$ 7,710,262 Corps' Revised Estimate x 1.25).

At trial, and in their efforts to establish that the Corps' estimate was not determined in a fair and reasonable manner, plaintiffs relied exclusively upon the testimony of their estimator, Mr. Taylor. ⁸ The Corps relied almost entirely upon the testimony of its estimator, Mr. Warren. ⁹ Upon **[*565]** direct examination, Mr. Warren conceded that the Corps' Revised Estimate, PX 7, p. 21, contained mathematical errors. Consequently, Mr. Warren corrected the Revised Estimate at trial from \$ 7,710,262 to \$ 7,913,668.06 -- an increase of \$ 203,406. ¹⁰ On the third day of trial, the Corps introduced its \$ 7,922,747 B&FE, DX 7, through Mr. **[**12]** Warren, on direct examination. That B&FE, apparently, was prepared over a three-day break in trial after plaintiffs had presented all of their evidence. The B&FE, DX 7, superseded the Corps' corrected Revised Estimate, and totalled \$ 7,922,747.17. ¹¹ Notwithstanding this submission, the Corps' B&FE did not produce a § 624 awardable contract. ¹² Given the fact that the Corps has modified its \$ 6,060,496.01 Original Estimate, PX 7, p. 1, three times with a Revised Estimate of \$ 7,710,262.00, PX 7, p. 21, a Revised Estimate corrected at trial of \$ 7,913,688.06, Tr. 480-481, and the B&FE of \$ 7,922,747.17, DX 7, the effect of the foregoing is a judicial admission by the Corps that its *Original Estimate* was unfair and unreasonable at the very minimum by \$ 1,862,251.16 (\$ 7,922,747.17 - \$ 6,060,496.01). To establish an awardable contract, plaintiffs now are

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Bean Dredging Corp. v. United States, 19 Cl. Ct. 561, 1990 U.S. Cl. Ct. LEXIS 41, 36 Cont. Cas. Fed. (CCH) P75811 (1990)

SHEPARD'S SUMMARY

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Unrestricted Shepard's Summary

No subsequent appellate history.

Citing References:

 Cautionary Analyses: **Criticized (1)**

Other Sources: Law Reviews (2), Statutes (2), Treatises (2), Court Documents (4)

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Manson Constr. Co. v. United States, 64 Fed. Cl. 746, 2005 U.S. Claims LEXIS 67 (2005) LexisNexis Headnotes HN2, HN3

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64 Fed. Cl. 746 p.751

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CW Gov't Travel, Inc. v. United States, 61 Fed. Cl. 559, 2004 U.S. Claims LEXIS 193 (2004) LexisNexis Headnotes HN3

61 Fed. Cl. 559 p.575

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Great Lakes Dredge & Dock Co. v. United States, 60 Fed. Cl. 350, 2004 U.S. Claims LEXIS 90 (2004) LexisNexis Headnotes HN6

60 Fed. Cl. 350 p.370

- ☐ 4. **Cited by:**
Cavalier Clothes, Inc. v. United States, 51 Fed. Cl. 399, 2001 U.S. Claims LEXIS 193 (2001) LexisNexis Headnotes HN16
51 Fed. Cl. 399 p.420
- ☐ 5. **Cited by:**
Overstreet Elec. Co. v. United States, 47 Fed. Cl. 728, 2000 U.S. Claims LEXIS 200 (2000) LexisNexis Headnotes HN3, HN13
47 Fed. Cl. 728 p.732
- ☐ 6. **Cited by:**
Mike Hooks, Inc. v. United States, 39 Fed. Cl. 147, 1997 U.S. Claims LEXIS 201, 42 Cont. Cas. Fed. (CCH) P77191 (1997) LexisNexis Headnotes HN12
39 Fed. Cl. 147 p.155
- ☐ 7. **Cited by:**
Day & Zimmermann Servs. v. United States, 38 Fed. Cl. 591, 1997 U.S. Claims LEXIS 160, 42 Cont. Cas. Fed. (CCH) P77186 (1997) LexisNexis Headnotes HN9
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- ☐ 8. **Cited by:**
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31 Fed. Cl. 342 p.367

ANNOTATED STATUTES (2 Citing Statutes)

- ☐ 9. 28 U.S.C. sec. 1491
- ☐ 10. 33 U.S.C. sec. 624

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- ☐ 11. ARTICLE: The Judge Advocate General's Legal Center & School, U.S. Army; Military Citation Guide; Tenth Edition August 2005, 2005 Army Law. 7 (2005)
- ☐ 12. ARTICLE: 1993 CONTRACT LAW DEVELOPMENTS--THE YEAR IN REVIEW, 1994 Army Law. 3 (1994)

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- ☐ 13. 1-2 Construction Law P 2.03
- ☐ 14. 11-F6 Government Contracts: Law, Admin & Proc Form 6


BRIEFS (1 Citing Brief)

- ☐ 15. PROMAC v. WEST, 1999 U.S. Fed. Cir. Briefs 1075, 1999 U.S. Fed. Cir. Briefs LEXIS 14 (Fed. Cir. May 6, 1999)

MOTIONS (3 Citing Motions)

- ☐ 16. ACADEMY FACILITIES MGMT. v. UNITED STATES, 2009 Fed. Cl. Ct. Motions 302, 2009 Fed. Cl. Ct. Motions LEXIS 69 (Fed. Cl. June 19, 2009)
- ☐ 17. Savantage Fin. Servs. v. United States, 2008 Fed. Cl. Ct. Motions 706669, 2009 Fed. Cl. Ct. Motions LEXIS 94 (Fed. Cl. Feb. 27, 2009)

- ☐ 18. TIP TOP CONSTR., INC. v. UNITED STATES, 2008 Fed. Cl. Ct. Motions 352, 2008 Fed. Cl. Ct. Motions LEXIS 15 (Fed. Cl. June 17, 2008)

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